

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

3 ATHENA CONSTRUCTION GROUP,) Case 1:21-cv-396
4 INC.,)
5)
6 Plaintiff,)
7)
8 v.) Alexandria, Virginia
9) August 25, 2021
10 WILLIAM M. SMITH, III,) 11:17 a.m.
11 and)
12 RE CONSTRUCTION, LLC,)
13)
14 Defendants.)
15) Pages 1 - 26

10 TRANSCRIPT OF RE CONSTRUCTION'S MOTIONS FOR
11 COSTS AND ATTORNEY'S FEES
12 BEFORE THE HONORABLE ANTHONY J. TRENGA
13 UNITED STATES DISTRICT COURT JUDGE
14

25 COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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1 THE CLERK: Civil Action 1:21-cv-396, *Athena*
2 *Construction Group, Inc. v. Smith, et al.*

3 Counsel, will you please note your
4 appearances for the record.

5 MR. DOWNEY: Good morning, Your Honor. Jeff
6 Downey for the defendant. I'd like to introduce Glen
7 Ellis, who will be presenting the argument today.

8 THE COURT: All right. Welcome.

9 MR. ELLIS: Good morning, Your Honor.

10 MR. JOHNS: Good morning, Your Honor. Milton
11 Johns for Athena Construction.

12 THE COURT: All right. We're here on the
13 defendant's motion for costs and attorney's fees. I
14 have read the briefing. I'd be pleased to hear further
15 from counsel.

16 MR. ELLIS: Yes, Your Honor. This motion is
17 being brought solely by RE Construction, one of the
18 defendants in the case that was brought against them by
19 Athena. The reason why RE Construction has asked us to
20 file this case is because there was simply no basis for
21 them to ever be included, and it would be unreasonable
22 and completely unfair to have them pay half of the
23 attorney's fees to defend what on its surface was
24 clearly a frivolous and bad faith lawsuit.

25 We've brought this motion under both the

1 Virginia good faith statute, which governs the
2 requirements of an attorney signing a complaint --
3 since this case was initially filed in state court --
4 and also under the Virginia Uniform Trade Secrets Act,
5 which allows the Court to issue attorney's fees for bad
6 faith cases.

7 The Virginia good faith statute is very
8 similar to the Rule 11 statute that we have here in
9 federal court.

10 THE COURT: It doesn't prescribe the
11 procedure as Rule 11 does, though.

12 MR. ELLIS: No, it doesn't have the
13 procedures and the safe harbor and everything that
14 Rule 11 has. But it sets forth what would be the
15 basis, and it sets forth kind of -- they use a
16 reasonableness standard and whether or not the
17 complaint, prior to being signed by counsel, is well
18 grounded in fact.

19 THE COURT: Right.

20 MR. ELLIS: And that's the issue.

21 THE COURT: I think it's an open issue,
22 whether that statute applies, frankly. I think it
23 depends on whether it's viewed as a procedural statute
24 or a substantive statute. I think if it's procedural,
25 it's simply displaced by Rule 11. If it's substantive,

1 then perhaps it applies, whether someone can recover
2 under it, if it does apply, under circumstances where
3 Rule 11 might not apply.

4 MR. ELLIS: Well, I think Your Honor is
5 right. The Fourth Circuit hasn't spoken on it.

6 THE COURT: Right.

7 MR. ELLIS: There could be, like Your Honor
8 was talking about, the issue with waiving Fifth
9 Amendment rights. It depends on how you would
10 interpret. There are courts that have -- and we cite
11 to it in a footnote -- that have looked at it and
12 interpreted it.

13 THE COURT: Right.

14 MR. ELLIS: Regardless, even under the
15 Virginia standard, whether you look at it under Rule 11
16 or whether you look at it under the bad faith standard,
17 under the Virginia Uniform Trade Secrets Act, the fact
18 here is that there was nothing -- there was no basis to
19 include RE Construction.

20 THE COURT: The fees were awarded under the
21 Trade Secrets Act. That would be limited to the trade
22 secrets count; wouldn't it?

23 MR. ELLIS: Well, I would argue that it would
24 not, Your Honor. Because here what were the
25 allegations were so interwrapped between all of the

1 criminal computer statutes that there was no way to
2 really just defend against --

3 THE COURT: They argue you would spend the
4 same amount of money if that were the only count.

5 MR. ELLIS: Quite frankly, they brought a
6 conspiracy claim that made RE Construction liable
7 potentially for all of the other claims, including the
8 Virginia statute and the other computer criminal act.
9 And there was simply no reason for them to be ever in
10 this case. Quite frankly, the response from Athena
11 virtually admits that.

12 The only facts in the case as to why they
13 included them was there was a close familial
14 relationship. There was a suggestion of cohabitation,
15 an in-law relationship, and RE Construction -- someone
16 at RE Construction had put their records, their medical
17 records on this hard drive. That's it. That's the
18 allegations that they suggest should have allowed them
19 to put forward a well-grounded complaint of computer
20 hacking and trade secret theft against RE Construction.
21 There's no suggestion -- there's no facts that any of
22 those actions were actually committed by anyone at RE
23 Construction.

24 I will point to the Court's attention on
25 page 10 of the defendant's response. Their response,

1 the last sentence, is Athena had a good faith basis to
2 believe that discovery in this action would reveal the
3 extent of RE Construction's access and use, discovery.

4 In other words, this has always been a
5 fishing expedition against RE Construction and that
6 they were hoping that maybe they would find something
7 in discovery. That is not the basis -- that does not
8 meet the requirements of whether you look at a Rule 11
9 or through a Virginia court or even the bad faith
10 statute under the Trade Secrets Act.

11 They had to have a complaint well-reasoned in
12 fact against RE Construction, not against Mr. Smith,
13 against RE Construction. They had to have it against
14 both of them. We're here about RE Construction.

15 There was nothing in the complaint that
16 suggests RE Construction had ever misappropriated --
17 had ever accessed these documents, misappropriated
18 these documents, or done anything with this hard drive
19 other than put their own sensitive medical records on
20 there, apparently by accident, since the hard drive was
21 then later claimed by Athena.

22 In that case, it is clear that there was no
23 basis for it. So why did they bring the case? Why did
24 they bring the case against RE Construction? They had
25 already sued Mr. Smith twice in state court. Well,

1 they brought it because of those exact reasons that I
2 just mentioned. They knew that RE Construction's owner
3 was a close familial member. They thought that there
4 was a cohabitation there. They brought it to harass
5 the relator in the *qui tam* case, to cause more problems
6 in his life, to drive up the litigation costs to not
7 only himself but now to his in-law.

8 What other facts are there? Well, we know
9 that this case was not filed until the relator decided
10 to proceed after the government declined. So those are
11 the facts that I think this Court, looking at this
12 complaint and the pleadings and the briefings, can draw
13 an inference that this was not a properly filed
14 complaint, that this complaint was not brought for
15 proper purposes, and that this complaint -- the filing
16 of this complaint should result in the award of costs
17 and attorney's fees, not only because of what happened
18 here, but also how the Athena defendants used the
19 Virginia courts as a tool to attack the relator who had
20 a case in a D.C. court.

21 And if defendants, who are the subject of *qui*
22 *tam* cases, can collaterally attack relators in state
23 court or other federal courts other than where the *qui*
24 *tam* case resides and collaterally attack their familial
25 members with these kinds of threadbare and baseless

1 complaints, then that is exactly what defendants facing
2 relators are going to do.

3 They are going to attack those relators'
4 families and themselves collaterally because it drives
5 up the cost of the relator. We had to get local
6 counsel. We've had to expend almost 90 hours in this
7 case even though it's only been in suit for less than
8 six months. That is the deterrence mechanism that
9 Rule 11 exists for. That is the deterrence mechanism
10 that the Virginia state court ruled the good faith
11 Virginia statute exists for, and that is the different
12 mechanism that the Virginia Trade Secrets Act has to
13 prevent this from happening.

14 THE COURT: I'll ask counsel this, but
15 perhaps you know as well. The forensic report that the
16 plaintiffs produced with respect to the disk, does it
17 state when the Athena files were actually downloaded
18 onto that disk? I know the report says it was sometime
19 prior to January-February 2016, but can they tell
20 specifically when those files were originally copied to
21 that disk?

22 MR. ELLIS: Yes, Your Honor. There is a
23 specific column, and it's in the footnote of the
24 report. There's a specific column in that report that,
25 if you look at the attachment, you can see that date.

1 That's how we knew. When we looked at it, that's how
2 we knew that all of these files -- I forget, 15-some
3 thousand files, all except for the medical records that
4 belong to RE Construction were downloaded before
5 Mr. Smith left the employment of Athena, which comports
6 with his recollection, which was that all of these
7 files were downloaded as part of a backing up system in
8 2013 or 2014.

9 THE COURT: What's that date range that they
10 were actually downloaded? 2013 or 2014?

11 MR. ELLIS: I don't recall, Your Honor. It's
12 in our motion to dismiss. I believe the latest was,
13 like, 2014. That's why, if you actually look at the
14 documents, even though he was employed until 2016,
15 there's nothing from 2014 to 2016.

16 THE COURT: All right.

17 MR. ELLIS: So I mean, that's why none of
18 this has ever made any sense. Because if he really
19 hacked the system like they're suggesting, why would he
20 stop? You know, why would he only take his Outlook
21 files and only up until 2014?

22 THE COURT: Right.

23 MR. ELLIS: So those are the reasons why
24 we've asked. This is the third lawsuit. We're asking
25 the Court for this, in part, to end the behavior of

1 Athena.

2 THE COURT: All right. Thank you.

3 MR. ELLIS: Thank you, Your Honor.

4 THE COURT: Counsel.

5 MR. JOHNS: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. JOHNS: With your permission, I'm going
8 to lower my mask.

9 THE COURT: Yes.

10 MR. JOHNS: It'll be a little bit easier
11 to --

12 THE COURT: Could you address my question.
13 Do you agree with counsel that the report shows the
14 actual downloading of Athena files sometime prior to
15 2016?

16 MR. JOHNS: Well, Your Honor, I think the
17 report shows that there is activity before and after
18 determination.

19 THE COURT: I understand that. My question
20 is does it reflect when the Athena files were first
21 downloaded to the disk? Counsel says that there's a
22 footnote that says it was sometime in 2013, '14, '15.

23 MR. JOHNS: I'm looking at the report.

24 THE COURT: I have the report. I, frankly,
25 didn't find the attachment.

1 MR. JOHNS: Your Honor, we -- our reading of
2 the report is that the files were -- that that hard
3 drive was attached to a computer January 25, 2016.

4 THE COURT: I understand that you've alleged
5 that the Athena files were, in fact, downloaded on
6 January 25, 2016. My question is really, is that
7 supported by the report? I know what the narrative of
8 the report is. I'm interested in whether you agree
9 with counsel that the footnote indicates dates of
10 actual downloading that preceded 2016.

11 MR. JOHNS: Your Honor, I'm looking at -- I'm
12 looking at the Exhibit B. I don't see a date in a
13 footnote in that exhibit.

14 THE COURT: All right. Well, let me ask you
15 this: Other than the disk itself and the forensic
16 report and the fact that the defendant went to work for
17 RE Construction, what other basis or evidence was there
18 to support the complaint?

19 MR. JOHNS: Well, we think the forensic
20 analysis is really the central part of it. The
21 relationship -- we have alleged communications between
22 Smith and --

23 THE COURT: What was the basis for that
24 allegation? What was the evidence you had that there
25 were discussions pertaining to the conspiracy that you

1 mentioned? Because you allege in the complaint that
2 Smith committed the violations before becoming an
3 employee or, if he was an employee, he was acting
4 outside the scope of his employment at RE Construction.
5 So that would essentially eliminate any agency theory
6 of liability.

7 MR. JOHNS: Well --

8 THE COURT: So what evidence did you have
9 that there were conspiratorial communications?

10 MR. JOHNS: So the communications, Your
11 Honor, go to what we found on the hard drive, which is
12 not evidence --

13 THE COURT: Which was what? There was just
14 simply the Athena files?

15 MR. JOHNS: There were Athena files.

16 THE COURT: Right, and the date of those
17 would obviously be important. Then there were
18 documents, RE Construction documents.

19 MR. JOHNS: RE Construction documents.

20 THE COURT: Right. So how --

21 MR. JOHNS: There were QuickBook files that
22 had actually been deleted from --

23 THE COURT: I'm sorry?

24 MR. JOHNS: There were QuickBook files that
25 had actually been deleted.

1 THE COURT: QuickBook files of who?

2 MR. JOHNS: RE Construction.

3 THE COURT: Right. So why would any of that
4 support conspiracy claims?

5 MR. JOHNS: Because there is no other way for
6 them to get onto the hard drive without cooperation
7 between Smith and RE Construction.

8 THE COURT: Smith's access to RE
9 Construction's computer, why would that support your
10 conspiracy claims based on the Athena files?

11 MR. JOHNS: Well, the conspiracy theory is,
12 Your Honor, that RE Construction provides this disk,
13 this hard drive to Smith. Smith accesses the Athena
14 files either himself or through --

15 May I have a small drink of water, Your
16 Honor?

17 THE COURT: Yes.

18 MR. JOHNS: Thank you, Your Honor.

19 THE COURT: Does the report through the
20 metadata reflect when the Athena files -- not only get
21 downloaded but were actually accessed as opposed to the
22 disk itself in some fashion being accessed?

23 MR. JOHNS: It does show that, when the files
24 were accessed. The file list is hundreds of pages.

25 Frankly, Your Honor, this was -- you know, on

1 a 12(b)(6) motion, we have consideration of evidence.
2 We don't have Mr. Lyle on the stand to explain the
3 findings.

4 THE COURT: I understand, but we're beyond
5 that. We're beyond the allegations. The question is
6 whether you had a good faith basis for bringing the
7 allegations. It depends on what evidence you had,
8 whether it's reflected in the complaint or not, what
9 evidence you had to in good faith believe you had these
10 claims. I'm trying to understand what evidence you had
11 beyond the disk itself and the report.

12 MR. JOHNS: So it was the -- so the disk, the
13 report, the findings in the -- that were downloaded and
14 then, again, the existence of this hard drive, which
15 was originally alleged to have come from Athena
16 Construction by Mr. Smith. The forensic analysis
17 showed it did not come from Athena Construction. I
18 think --

19 THE COURT: Well, the disk was something that
20 was supposedly not an Athena disk. I'm not sure how
21 you determined that, but let's assume that's true. I'm
22 not sure what it means when it says the disk didn't
23 come from Athena Construction.

24 MR. ELLIS: Well, it wasn't --

25 THE COURT: Isn't a disk fairly genetic?

1 MR. JOHNS: The theory is it was not his
2 property when he was an employee with Athena; it's
3 someone else's property.

4 THE COURT: Right.

5 MR. JOHNS: And what we found, again, from
6 the report looking at those thousands of files, when
7 they were accessed after the time that Smith has left
8 the employ of Athena, the presence of the RE
9 Construction files on the disk, the living
10 relationships, the employment relationships, all of
11 those, we believe, created a reasonable inference that
12 we can rely on as part of our complaint.

13 I think that the standard says that you --
14 that the reasonable inference that can be made is what
15 could be -- it could be found in discovery, and it's
16 not, well, we're going to go into discovery and find
17 our evidence. It's are the inferences supported or is
18 the good faith basis established by what we have at the
19 time and what we believe we can find in discovery. And
20 so I think those are all of the good faith bases.

21 You know, if I can just add a couple of
22 things. I think there are significant procedural
23 hurdles on this motion because there was no 21-day --

24 THE COURT: I understand that, but let me ask
25 you this: There's an allegation that the company was

1 damaged in the amount of \$2 million, which increased
2 from \$60,000 or \$70,000 in the original complaint.
3 What evidence did you have that any of the information
4 on the disk had been or was about to be utilized that
5 was reflected in anything that you knew about?

6 MR. JOHNS: The allegations were that at the
7 time that the download was made, that RE Construction
8 was in the midst of litigation with Athena.

9 THE COURT: Right, as a subcontractor. Was
10 there anything in that litigation that would suggest
11 that RE Construction was utilizing in any way any of
12 the information on the disk?

13 MR. JOHNS: It's -- it would be difficult to
14 say what they were using and what they weren't using at
15 that time.

16 THE COURT: Well, there was an allegation
17 that this information was, in fact, being used as part
18 of your trade secrets claim, that it was being
19 misappropriated and used. What evidence did you have
20 of that?

21 MR. JOHNS: So, again, the evidence is that
22 it's on a hard drive that is also with RE Construction,
23 QuickBook files, financial files --

24 THE COURT: Right.

25 MR. JOHNS: -- and the other documents. And

1 I believe that for 12(b)(6) purposes and for purposes
2 of filing the complaint, it creates a reasonable
3 inference that can be followed up. Again, the 12(b)(6)
4 analysis was done with -- considering evidence.
5 Normally, we wouldn't put evidence on.

6 THE COURT: Right. I'm trying to find out
7 what the evidence was even though it's not reflected in
8 the complaint.

9 MR. JOHNS: Right. I think a good faith
10 basis does not require having all of the evidence that
11 will ever support the complaint.

12 THE COURT: No, just some evidence.

13 MR. JOHNS: And I think that there is
14 significant evidence that circumstantially ties these
15 two parties together.

16 THE COURT: Let me just ask this: Did you
17 have any evidence at the time that the two companies
18 were in competition for the same clients or that there
19 was a loss of business or that a client that had
20 previously worked with Athena was now working with RE
21 Construction or that any of the information was used in
22 bids or pricing or anything like that?

23 MR. JOHNS: So RE Construction was a
24 subcontractor.

25 THE COURT: Right.

1 MR. JOHNS: And so the -- so with the trade
2 secret claim, under the Virginia Uniform Trade Secrets
3 Act, you can state a claim by possession as well. So
4 our reading of the VUTSA is that use is not a mandatory
5 condition for finding a violation. Obviously, we --

6 THE COURT: That's what you allege. You say
7 that the defendants intentionally, willfully, and
8 maliciously required, disclosed, and used Athena's
9 trade secrets.

10 MR. JOHNS: Well, Your Honor, again, that is
11 our inferential belief based on the facts and
12 circumstances and everything that was presented, again,
13 along with the significant presence of the Athena files
14 acquired after the employment of Smith had ended.

15 THE COURT: Again, just so I'm clear,
16 Counts 2, 3, and 4 all relate to computer fraud,
17 computer invasion. You lump Smith and RE Construction
18 together. You didn't have any evidence that the
19 construction company was invading your computers in any
20 fashion?

21 MR. JOHNS: We had a reasonable --

22 THE COURT: The only actor here was Smith, is
23 that right, that you allege?

24 MR. JOHNS: Well, we know it has to have been
25 at least Smith because he's the one who produced the

1 hard drive.

2 THE COURT: Right.

3 MR. JOHNS: Again, the reasonable
4 inference -- given all the things that are in the
5 complaint, the reasonable inference is that this was
6 some concerted effort, after he's left Athena, to
7 retrieve and to recover those files, financial files
8 and invoices and contracts and so forth. So I think
9 all of those create reasonable inferences that create
10 the good faith basis to put forward the complaint.

11 THE COURT: All right.

12 MR. JOHNS: Then, Your Honor, Mr. Ellis
13 didn't speak about Rule 11 in his presentation. It's
14 briefed. I think three issues related to that. We've
15 spoken a lot about the substantive part. There was no
16 21-day service, which is required by the rule. And it
17 was filed after the close of the case, and the Fourth
18 Circuit says that in both of those instances, you don't
19 have access to Rule 11.

20 And then, also, there's been no presentation
21 of what the attorney fees are or what they amounted to.
22 And so even if the Court was inclined to award those
23 fees, they would still have to be reasonable. We would
24 have to have an opportunity to --

25 THE COURT: I understand.

1 MR. JOHNS: -- examine them.

2 So I believe, Your Honor, that there was a
3 good faith basis based on those reasonable inferences,
4 based on the fact that we had this forensic analysis.
5 We know the relationship to the parties. We know the
6 post employment, the subsequent employment. I think
7 all of those allow us to make that reasonable
8 inference, and I don't think a plaintiff is required to
9 have every fact in hand, simply that a reasonable
10 investigation and reasonable inferences were made.
11 That would be our opposition.

12 THE COURT: All right. Thank you.

13 Mr. Ellis, I'll give you the last word on
14 this.

15 MR. ELLIS: Yes, Your Honor. Your Honor
16 asked counsel several times of what is the evidence.
17 What is the evidence that these documents were used in
18 the -- we call it a litigation. It's called a
19 litigation, but it was actually an arbitration because
20 it was a subcontractor. They were arguing about how
21 much they should be paid. Well, the arbitration, there
22 was an exchange of discovery. Documents were exchanged
23 by the parties. None of those documents came from the
24 drive, from the disk. None of those documents were
25 used. There is no evidence that it was used in that

1 litigation.

2 RE Construction is a subcontractor that was
3 fed work by Athena. There's no evidence that they used
4 these documents to become a prime government contractor
5 or to steal or poach a client or a contract. There's
6 nothing to suggest that even though they've made --
7 there's nothing to suggest it. There's nothing there
8 at all even though they've made the allegation of
9 misappropriation.

10 There is simply an allegation or suggestion
11 that this disk existed within the arm's reach of the
12 employees of RE Construction. That is not enough.
13 There is no fact supporting that RE Construction
14 accessed the Athena documents. Yes, they accessed the
15 disk, but the report doesn't show that the Athena
16 documents were accessed by RE Construction. The report
17 doesn't show that the Athena documents were printed or
18 downloaded. The report -- the forensic report doesn't
19 suggest anything in terms of use or misappropriation.

20 The report in the footnote that I was
21 referring to is -- there's a footnote where it explains
22 what the headers are on the spreadsheet, and there was
23 a spreadsheet attached to the back of the report. One
24 of those headers relates to the date that the documents
25 were downloaded. So if you go to the spreadsheet under

1 that header, you can actually look to see when those
2 documents were downloaded onto the disk. And if you
3 look and see, I think we state only 24 out of the 14
4 were downloaded onto the disk after Mr. Smith was
5 terminated. So that's the reference to the footnote.

6 THE COURT: Those 24 relate to --

7 MR. ELLIS: They relate to RE Construction
8 stuff --

9 THE COURT: -- RE Construction documents.

10 MR. ELLIS: -- not to Athena stuff. And they
11 don't show anything in terms of anyone doing anything
12 with this disk. We don't dispute that --

13 THE COURT: There's no evidence on that
14 report concerning when other than when the Athena
15 documents were accessed after being downloaded?

16 MR. ELLIS: There is a summary statement in
17 the report that they were accessed somewhere between
18 January 25, 2016, and April 2, 2018. But if you look
19 at it, the stuff that comes before the *qui tam*
20 litigation was just accessing the disk, not -- there's
21 nothing that showed --

22 THE COURT: Well, that's what I'm after. Not
23 just accessing the disk, but accessing the Athena
24 documents themselves. Is there anything in the report
25 that indicates dates of access as to the Athena

1 documents themselves?

2 MR. ELLIS: I don't believe so, Your Honor.
3 Because if you had that, then you could actually, you
4 know, relate it to -- well, here's RE Construction
5 attending a bidding conference, and they've downloaded
6 all of these financials for Athena. You could actually
7 show what defendants are alleging. None of that
8 information is in there. There's no information as to
9 when documents were downloaded or by who other than to
10 say that the disk was accessed.

11 THE COURT: All right.

12 MR. ELLIS: That work could have been done
13 and at least it should have been done before these
14 lawsuits were brought, or they should have just brought
15 it against Smith. If they got into discovery,
16 according to their theory of the statute of
17 limitations, they could've always come back to the
18 Court and added a newly discovered party.

19 They didn't do that because the same reason
20 they didn't file this as a cross-motion before Judge
21 Mehta. They didn't do it because they wanted the
22 duplicative process. They wanted the burden. They
23 wanted to serve him at his home with his in-laws. They
24 wanted all of this. They didn't care about the facts.
25 They wanted this process, and they wanted the two

1 defendants to face bills in the tens of thousands of
2 dollars for this defense. That's what they wanted, and
3 that's what they got.

4 The Court shouldn't allow them to get away
5 with it. That's why we filed the motion.

6 Thank you, Your Honor.

7 THE COURT: All right. I'm going to take it
8 under advisement. Let me just state a couple of
9 things. I think Rule 11 quite clearly requires service
10 of the actual motion, and that wasn't done in this
11 case. So to the extent there's going to be an award of
12 attorney's fees, if the Court makes that decision, it
13 would have to be under the Virginia Trade Secrets Act
14 or the Virginia equivalent of Rule 11. The Court will
15 consider that.

16 I would like counsel to file very short --
17 I'm talking about one page or two pages of just
18 confirming their view specifically of whether the
19 forensic report identifies the dates on which the
20 Athena files were downloaded and any dates on which the
21 Athena files, as opposed to the disk itself, were
22 accessed. If you could, do that within the next, say,
23 seven days.

24 MR. JOHNS: Yes, Your Honor.

25 MR. ELLIS: Yes, Your Honor.

1 THE COURT: All right. The Court will take
2 it under advisement.

3 All right. Anything further?

4 MR. JOHNS: I was just looking for my mask.

5 THE COURT: All right.

6 MR. ELLIS: Nothing, Your Honor.

7 THE COURT: All right. Thank you.

8 Counsel is excused.

9 The Court will stand in recess.

10 -----
11 Time: 11:48 a.m.

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22 I certify that the foregoing is a true and

23 accurate transcription of my stenographic notes.

24

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/s/
Rhonda F. Montgomery, CCR, RPR